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The Elevation of Building Rights to Ownership Rights in Shophouses and Home Offices After the Enactment of Law Number 11 of 2020 concerning Job Creation

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Abstract

This research aims to analyze the regulations regarding the elevation of land rights for dual-function residential buildings specifically shophouses, as stipulated in Government Regulation Number 18 of 2021, with the formulated problem statement is about the elevation of Building Rights for shophouses according to Government Regulation Number 18 of 2021. Beforehand, shophouses and home offices are only classified as a building with business function, the Building Use Rights on shophouses and home offices cannot be upgraded to Ownership Rights. Based on the Decree of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 6 of 1998, it is necessary to upgrade Building Use Rights to Ownership Rights of building with residential function only and it is stated on the Building Construction Permit. This research was conducted using a normative juridical method through a statutory approach and a conceptual approach to see the existing arrangements regarding the issues raised and expert opinions related to these problems. The result of this research is that shophouses and office residences play a dual role, serving both residential and commercial functions where The Government Regulation No. 18 of 2021 emphasizes that shophouses and office residences with Building Rights can be upgraded to full Ownership Rights upon the rights holder's request by fulfilling the specified requirements.

Keywords: Land Rights; Right of Ownership; Shophouses

1. INTRODUCTION

The fundamental connection between human existence and the land is essential, as the land fulfills both capital and social roles. Beyond meeting basic needs, it serves as a social asset, fostering unity within communities and playing a crucial role in various facets of human life. As a capital asset, land is crucial for development, transforming into a valuable economic object open to trade and speculation by various parties¹. In Indonesia, as an agrarian society, land is essential for building, agriculture, and investment². This perspective aligns with Maslow's Hierarchy of Needs, which emphasizes fulfilling basic needs before addressing higher-level ones. The most basic need is physiological needs which are consists of requirements for human survival, which is air, food, drink, shelter, and others³. One of the fundamental needs associated to land is the need for a shelter.

¹ Faris Faza Ghaniyyu, Yani Pujiwati, and Betty Rubiati, "Jaminan Kepastian Hukum Konversi Sertipikat Menjadi Elektronik Serta Perlindungannya Sebagai Alat Pembuktian," *Jurnal USM Law Review* 5, no. 1 (2022).

² Supriyadi, Diah Sulistyani Ratna Sediati, and Nafis Dardiri, "Implementasi Pengaturan Pendaftaran Tanah Dalam Pembatalan Peralihan Hak," *Jurnal USM Law Review* 6, no. 2 (2023).

³ Douglas T. Kenrick et al., "Renovating the Pyramid of Needs: Contemporary Extensions Built Upon Ancient Foundations," *Perspectives on Psychological Science* 5, no. 3 (2011).

Land serves various purposes, including residence, income source, business space, and collateral for loans⁴. According to Soedjarwo Soermihardjo, land is posited as a pivotal source of utility, possessing profound consequential value in relation to human existence and livelihood⁵. However, the mere construction of these edifices is insufficient to meet human needs. Every individual undoubtedly possesses unique interests concerning a piece of land, thereby necessitating the government to perceive the imperative need for formulating regulations that safeguard the rights and obligations of each respective individual⁶. In Indonesia, building on land is tightly regulated, requiring permits and proof of ownership. The populace needs secure land rights to ensure fair allocation. Legal scholar Boedi Harsono views land tenure rights as a series of privileges and responsibilities⁷. Individual land rights were established in Law Number 5 of 1960 on Basic Agrarian Regulations (hereinafter referred to as UUPA) with Ownership Rights being the strongest, hereditary, and most comprehensive, as per Article 20 of UUPA.

Ownership Rights for land, especially for homes, are highly valued but not easily obtained by everyone. To address this, the government introduced Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 6 of 1998 which pertains to the Conferment of Ownership Rights to Residential Land, allowing those with Building Rights or Land Use Rights for residential land to apply for an upgrade to Ownership Rights. Article 1 of this regulation stipulates that land under Building Rights or Land Use Rights, with an area measuring 600 square meters or less, and designated for residential purposes, provided it belongs to an Indonesian citizen, is eligible for an application to elevate its land rights status to Ownership Rights. Additionally, the increasing use of buildings has led to the rise of dual-purpose structures, like shophouses and office-residences. This phenomenon is also attributed to the classical rationale, wherein the rapid increase in land prices is inherently linked to the inverse relationship between the expansiveness of required land and the persistently growing population⁸. However, the increasing use of buildings, like shophouses and office-residences, poses challenges in qualifying for land rights elevation under this regulation. The lack of recognition for dual-purpose functions in the regulation excludes such structures from residential classification, raising concerns in the community.

While Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 6 of 1998 aimed to guarantee ownership for Indonesian citizens, it fell short in addressing dual-purpose residential buildings. To rectify this, Law Number 11 of 2020 on Job Creation and related regulations that were enacted in 2021 including

⁴ Muhammad Aziz Zaelani, Wahyu Beny Mukti Setiyawan, and Fery Dona, "Mewujudkan Pendaftaran Tanah Yang Responsif Pada Era Disrupsi Sebagai Penunjang Kesejahteraan Rakyat," *Jurnal USM Law Review* 5, no. 1 (2022).

⁵ Muchtar Wahid, *Memaknai Kepastian Hukum Hak Milik Atas Tanah* (Jakarta: Republika, 2008).

⁶ Iwan Permadi, "Peralihan Hak Atas Tanah Warisan Terhadap Ahli Waris Beda Agama Dalam Perspektif Hukum Positif Dan Hukum Islam," *Jurnal Ius Constituendum* 8, no. 1 (2023).

⁷ Boedi Harsono. *Hukum Agraria Indonesia: Sejarah Pembentukan UUPA, Isi dan Pelaksanaannya*. (Jakarta: Djambatan, 2003)

⁸ Yulies Tiena Masriani, "Pentingnya Kepemilikan Sertifikat Tanah Melalui Pendaftaran Sebagai Bukti Hak," *Jurnal USM Law Review* 5, no. 2 (2022).

Government Regulation Number 18 of 2021, indicating a legal evolution to adapt to changing needs.

In comparison to prior research by Winanti et al. (2020) focusing on elevating Building Rights to Ownership status in Graha Prima Housing, Bekasi, for civil servants and armed forces, this study delves into similar issues but focuses more on buildings with one function⁹. Sumardji et al. (2023) explore the rationale for granting Ownership status to shophouses, outlining conditions. However, this research does not address upgrading Building Rights in shophouses and home offices.¹⁰ Lastly, Widjaja and Hardiona (2021) highlight government's rejections of Building Rights upgrades for shophouses, citing non-submission of required documents under Regulation 9/1999 as the primary reason¹¹. Meanwhile, this research focuses on elevating the Building Rights to Ownership status to shophouses and home offices. It does not focus on the rejections of the application of the upgrades but on how to upgrade and how the elevation can be done after the enactment of Law Number 11 of 2020 concerning Job Creation.

Therefore, this article aims to analyze the regulations regarding the elevation of land rights for dual-function residential buildings, as stipulated in Government Regulation Number 18 of 2021.

2. METHOD

The research methodology employed in this study follows a normative juridical approach, a process aimed at uncovering legal rules, principles, and doctrines to address the legal issues at hand¹². In this context, two distinct approaches are utilized: the Statute Approach, which involves a comprehensive analysis of all pertinent laws and regulations related to the subject matter, encompassing the Basic Agrarian Regulations Law (Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria), the Job Creation Law (Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja), Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 6 of 1998 concerning the Granting of Ownership Rights to Residential Land, Government Regulation Number 18 of 2021 on Land Management Rights, Land Rights, Apartment Units, and Land Registration, alongside other relevant legal provisions. Furthermore, this research employs the Conceptual Approach, which entails an examination of existing viewpoints and legal doctrines pertinent to the subject matter under consideration.

3. RESULTS AND DISCUSSION

3.1. Dual Function of Shophouse Building

As a fundamental necessity, a residential dwelling stands at the core of an individual's survival needs. It serves as a sanctuary where one can cultivate one's life and shield oneself and one's family from potential threats. Over time, the demand for land by humans has

⁹ Atik Winanti, Taupiqqurahman, and Rosalia Dika Agustanti, "Peningkatan Status Hak Guna Bangunan Menjadi Hak Milik," *Jurnal Bakti Masyarakat Indonesia* 3, no. 2 (2020).

¹⁰ Sumardji et al., "Ratio Legis Pemberian Hak Milik Untuk Rumah Toko: Sebuah Evolusi Hukum," *Notaire* 6, no. 1 (2023).

¹¹ Susan Elseline Widjaja and Rosalia Hardiona, "Keabsahan Penolakan Permohonan Peningkatan Hak Guna Bangunan Atas Rumah Toko," *Jurnal Education and Development* 9, no. 2 (2021).

¹² Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011).

grown, driven by the increasing population in Indonesia. Paradoxically, the availability of land has decreased in proportion to the escalating demand. This circumstance has led to dual-purpose buildings, called shophouses or office residences. These multi-story structures are designed to serve both residential and commercial functions. Typically, the ground floors of these buildings are designated for businesses or offices, while the upper floors are used for residential purposes. In this context, shophouses can be established on land with different land rights statuses, including Ownership Rights, Building Rights, or Land Use Rights. However, due to ownership rights' inherent strength, comprehensiveness, and hereditary nature, individuals often aspire to have their shophouses situated on land with ownership rights status. This provides a higher level of security and permanence, also free from the constraints of specific time limits.

In 1998, the Minister of Agrarian Affairs introduced a legal instrument as a solution to guarantee the ownership of residential homes for Indonesian citizens, recognizing that residential homes are a fundamental human need. This legal instrument is Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 6 of 1998 concerning Granting Ownership Rights to Residential Land. This regulation allowed every Indonesian citizen who already possessed a residential home on Building Rights or Land Use Rights to upgrade the status of their rights to Ownership Rights.

Consequently, these buildings must be exclusively designated for residential purposes. This stipulation was further underscored by the Circular Letter from the Minister of Agrarian Affairs/Head of the National Land Agency Number 500-3460 of 1999, issued on February 18, 1999. The Circular Letter explicitly clarified that shophouses do not fall under the category of residential homes. In line with this clarification, the Minister of Home Affairs subsequently issued Minister of Home Affairs Regulation Number 32 of 2010, outlining the Guidelines for Building Permits. Article 7 of Minister of Home Affairs Regulation Number 32 of 2010 detailed that buildings may have various functions, including residential, religious, commercial, social, cultural, or dual-function buildings. However, shophouses are explicitly categorized as buildings with commercial functions and are not considered residential or dual-function buildings.

Therefore, by the existing regulations, even though shophouses serve dual functions as residential and commercial buildings, the elevation of land rights for shophouses to Ownership Rights cannot be pursued or its application denied. The rejection of such applications is based on the contradiction with Article 2 paragraph (1) of Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 6 of 1998. Article 2 paragraph (1) stipulates that buildings eligible for land rights elevation to Ownership Rights are those intended for residential purposes, substantiated by photocopies of Building Permits or a Statement Letter from the local Village/Community Chief if a Building Permit has yet to be issued. In this context, Urip Santoso interprets Ownership Rights as an entitlement that permits the possessor to utilize or derive benefits from the land under their ownership or tenure¹³. Article 3 of the Minister of Agrarian Affairs/Head of the National

¹³ Urip Santoso, *Hak Atas Tanah, Hak Pengelolaan, Dan Hak Milik Atas Satuan Rumah Susun* (Jakarta: Kencana, 2017).

Land Agency Regulation Number 6 of 1998 specifies that such applications are only permitted for land utilized as a residential home. This fact would be substantiated through Building Permit documentation. This regulation was reinforced by the Circular Letter from the Minister of Agrarian Affairs/Head of the National Land Agency Number 500-3460 of 1999, issued on February 18, 1999, which explicitly excludes shophouses from the definition of residential homes as specified in Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 6 of 1998.

The rejection letter issued by the Head of the Local Land Office can be considered a juridical instrument known as an Administrative Decision (Keputusan Tata Usaha Negara, abbreviated as "KTUN"). According to Van Der Pot, a KTUN can be deemed valid if it meets four (4) criteria, which are issued by an authority (*organ*) that has the power (*bevoegd*) to make such decisions; its formation must not contain any legal deficiencies considering that a decision represents a declaration of intent (*wilsverklaring*), the decision must take a form and be executed by the procedures established in the regulations that underlie the decision's formation, and the purpose and substance of the decision must align with the purpose and substance of its underlying regulations.¹⁴

Van Der Pot's viewpoint finds reinforcement in the opinion of Van Der Wel, who asserts that an Administrative Decision (KTUN) can be deemed valid when it satisfies two (2) distinct criteria: material and formal requirements. The material requirements are a competent government authority makes the decision; there must be no legal defects in the intention of the government authority that issues the decision; the form and procedures of the decision must align with those prescribed in the regulations that serve as the basis for its formation, the purpose and content of the decision must not be at odds with the intended goals and content (*doelmatig*) they aim to achieve¹⁵. Meanwhile, the formal requirements that must be met by an Administrative Decision (KTUN) to be considered valid are all requirements related to the preparation and manner of making the decision must be fulfilled. Second, the decision must conform to the prescribed format. Third, all requirements regarding the execution of the decision must be met. Last, the issuer of the KTUN must specify the duration of the rights arising from the issuance and announcement of the KTUN.

In line with the principles articulated by both Van Der Pot and Van Der Wel, it is evident that the content and purpose of an Administrative Decision (KTUN) must harmonize with the objectives and content of the legal regulations serving as its foundation (*doelmatig*). Therefore, the legal foundation becomes of utmost significance when issuing a KTUN. In the case of rejecting applications for the elevation of land rights for shophouses to Ownership Rights, the legal framework is provided by the Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 6 of 1998. Within this regulation, a fundamental principle is underscored: the recognition that residential homes constitute a fundamental human necessity. Therefore, Indonesian citizens' ownership of residential homes must be safeguarded through the provision of land rights. Hence, the Minister of Agrarian

¹⁴ Yudhi Setiawan, Boedi Djatmiko Hadiatmodjo, dan Imam Ropii. *Hukum Administrasi Pemerintahan: Teori dan Praktik*. (Depok: Rajawali Pres, 2017)

¹⁵ *Ibid.*

Affairs/Head of the National Land Agency Regulation Number 6 of 1998 was established to facilitate the conversion of land rights into Ownership Rights for individual Indonesian citizens who own residential homes with Building Rights or Usage Rights. However, Article 7, paragraph (2) of Minister of Home Affairs Regulation Number 32 of 2010, which outlines the Guidelines for Building Permits, narrowly defines residential properties as dwellings, encompassing both simple and non-simple residential homes.

Nevertheless, the concept of buildings with residential functions extends beyond mere residential homes. Minister of Home Affairs Regulation Number 32 of 2010 appears to overlook the residential function within shop-houses. This omission is explicitly stated in Article 7, paragraph (4) of Minister of Home Affairs Regulation Number 32 of 2010, which categorizes shop-houses exclusively as commercial buildings. Shop-houses inherently serve dual functions, encompassing both residential and commercial aspects, as evidenced by individuals who reside within these structures as part of their daily lives. Consequently, Article 2, paragraph (1) of Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 6 of 1998, in conjunction with the Circular Letter from the Minister of Agrarian Affairs/Head of the National Land Agency Number 500-3460 of 1999, appears to be at odds with the original intent behind issuing Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 6 of 1998, which was to safeguard land rights used for constructing residential homes.

Hence, a Decision that denies the request to upgrade land rights for shop-houses to Ownership Rights may be considered invalid since it conflicts with the legal framework underpinning its issuance. Therefore, applications for elevating land rights for shop-houses to Ownership Rights should rightfully be approved. To address the challenges posed by these regulations, the government enacted Law Number 11 of 2020 concerning Job Creation, which includes provisions addressing dual functions in buildings.

3.2. Regulations on the Enhancement of Rights in Shophouses Post Job Creation Law

Essentially, the legal framework should dynamically adjust alongside the changing aspects of society, providing room for flexibility and adaptation¹⁶. Following the enactment of Law Number 11 of 2020 on Job Creation, there have been revisions in several regulations about land rights elevation. One noteworthy change is the issuance of Government Regulation Number 16 of 2021 concerning the Implementation of Law Number 28 of 2002 on Buildings. Within this framework, the recognition of multifunctional buildings has gained prominence. Article 4, paragraph (2) of Government Regulation Number 16 of 2021 delineates five building functions: residential, religious, commercial, social and cultural, and special functions.

Formerly, regulations primarily acknowledged buildings with singular, predominant functions. However, the evolving landscape has led Indonesia's normative regulations to recognize dual-function or multifunctional buildings. This acknowledgment arises from the growing scarcity of available land, prompting the optimal utilization of land resources to

¹⁶ Benny Riyanto. "Pembangunan Hukum Nasional di Era 4.0", *Jurnal Rechtsvinding* 9 no. 2 (2020)

accommodate diverse building functions within a unified structure¹⁷. In connection with this, Article 4, paragraph (6) of Government Regulation Number 16 of 2021 states as follows:

“Mixed functions as referred to in paragraph (3) consist of more than 1 (one) function as referred to in paragraph (2) that a Building possesses.”

This shows that a building may have dual functions. It also confirms that shophouses and office-residential buildings are recognized as mixed-use buildings, combining both residential and commercial functions. Additionally, the Explanation of Article 5, paragraph (3) of Government Regulation Number 16 of 2021 categorizes buildings with commercial functions into several categories, including commercial trade functions, which encompass shops..

Furthermore, based on Minister of Agrarian Affairs and Head of the National Land Agency Decision Number 6 of 1998, when an applicant wishes to apply for the elevation of land rights, they need a Building Permit (Izin Mendirikan Bangunan or IMB) indicating that the building has a residential function. With the enactment of Law Number 11 of 2020, the term "Izin Mendirikan Bangunan" is no longer used and has been replaced by Building Construction Approval (Persetujuan Bangunan Gedung or PBG). In this context, PBG operates akin to IMB, where the building's purpose is outlined in the PBG. Aligned with Article 6 of Law Number 28 of 2002 on Buildings, modified by Article 24 of Law Number 11 of 2020, both IMB and PBG serve as permits. However, PBG facilitates the construction of a building with a designated purpose while still adhering to technical building standards to guarantee the building's dependability in terms of health, comfort, convenience, and safety¹⁸.

Following the implementation of Law Number 11 of 2020 on Job Creation, the Government issued Regulation Number 18 of 2021 on Management Rights, Land Rights, Housing Units, and Land Registration as a subsequent regulation. According to Article 94 of Government Regulation Number 18 of 2021, it states:

“The right of building use and the right of use owned by Indonesian citizens, which are used and utilized for residential purposes, including shophouses and office houses, may be granted ownership upon the request of the rights holder.”

In light of these developments, the residential function of shophouses and office houses is now officially recognized, enabling individuals to apply for the elevation of rights on shophouses as stipulated in the Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 6 of 1998. However, there have been certain adjustments made to the requirements that applicants must fulfill. These revised criteria requires the applicant must be an individual Indonesian citizen, as evidenced by proof of identity, including the

¹⁷ A. Nasir. “Bangunan Fungsi Campuran Apartemen dan Shopping Mal di Yogyakarta”. Universitas Islam Indonesia (1997)

¹⁸ R. Situngkir. “Peralihan Izin Mendirikan Bangunan menjadi Persetujuan Bangunan Gedung Berdasarkan Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja”, *IURIS STUDIA: Jurnal Kajian Hukum* 2 no. 3 (2021)

Identity Card, where the address of the shophouse must match the address on the applicant's Identity Card. This serves as evidence that the shophouse is genuinely used as the applicant's place of residence. Besides that, the land should have an area of 600 m² with an Ownership certificate of the land, a photocopy of the Building Permit (PBG) that clearly states that the building is used partially or entirely as a residence/dwelling, a photocopy of the latest Property Tax (SPPT PBB), and a written declaration from the applicant affirming that they will only have ownership rights for residential properties not exceeding 5 (five) plots, with a total area not exceeding 5,000 m².

The addition of the condition requiring the applicant's Identity Card with an address matching the shop house being upgraded is an effort by the government to ensure the fulfillment of people's housing needs. In the implementation of land rights upgrades for shophouses and office residences, the government must apply the principle of caution to avoid harming the public. Therefore, in the process of upgrading land rights for shophouses and office residences, the government should conduct a survey of the property undergoing the upgrade. This is important because, in practice, many shophouses and office residences are used solely as stores or offices, and confirming their residential status is crucial to safeguard the interests of the public.

4. CONCLUSION

The analysis reveals that shophouses and office residences play a dual role, serving both residential and commercial functions. This dual functionality is explicitly recognized in Indonesian legislation, notably in Article 4 paragraph (6) of Government Regulation No. 16 of 2021 on Building Constructions. This recognition allows these structures to have mixed purposes, combining both residential and commercial uses. Given this acknowledgment, shophouses and office residences can be granted full ownership rights, following the provisions of the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 6 of 1998. The upgrading is grounded in the acknowledgment of dual functions within buildings as specified in Government Regulation No. 16 of 2021. Furthermore, Government Regulation No. 18 of 2021 emphasizes that shophouses and office residences on Right to Build land can be upgraded to full ownership rights upon the rights holder's request. However, this process must consider the genuine residential function of these structures to align with the regulation's underlying purpose of meeting housing needs. Therefore, during the upgrading process, it is crucial to verify the owner's ID card, ensuring that the address matches the shophouse or office residence. Overall, this analysis underscores the legal recognition of the dual functionality of these structures and outlines the process for upgrading their ownership rights while emphasizing the importance of their genuine residential function.

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